

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JUAN PEREZ

Plaintiff,

- against -

ANSWER OF DEFENDANT  
CITY OF NEW YORK

07 CV 7098 (HB)

CITY OF NEW YORK; NEW YORK CITY  
POLICE DEPARTMENT (NYPD);  
individually and in their official capacity as  
NEW YORK CITY POLICE OFFICERS-  
POLICE OFFICER LUIS FERNANDEZ,  
SH#17933, and POLICE OFFICER SEGIO  
MARTE, SH# 25830, Precinct 30 and John  
Doe Police Officer.

JURY TRIAL DEMANDED

Defendants.

-----X

Defendants Luis Fernandez and Segio Marte, by their attorney, Michael A.  
Cardozo, Corporation Counsel of the City of New York, for their answer to the complaint,  
respectfully alleges, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the complaint, except admit that plaintiff purports to proceed as stated therein.
2. Deny the allegations set forth in paragraph "2" of the complaint, except admit that plaintiff purports to bring this action as stated therein.
3. Deny the allegations set forth in paragraph "3" of the complaint, except admit that plaintiff purports to invoke the Court's jurisdiction as stated therein.
4. Deny the allegations set forth in paragraph "4" of the complaint, except admit that plaintiff purports to base venue as stated therein.
5. Defendants state that the statement set forth in paragraph "5" of the complaint is not an averment of fact to which a response is required.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “6” of the complaint.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “7” of the complaint, except admit that the City of New York is a municipal corporation arranged under the laws of the State of New York and that it employs police officers.

8. Deny the allegations set forth in paragraph “8” of the complaint, except admit that the City of New York maintains a police department.

9. Paragraph “9” of the complaint contains conclusions of law, rather than averments of fact, and accordingly requires no response.

10. Paragraph “10” of the complaint contains conclusions of law, rather than averments of fact, and accordingly requires no response.

11. Deny the allegations set forth in paragraph “11” of the complaint, except admit plaintiff was arrested on April 19, 2007.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “12” of the complaint.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “13” of the complaint, except deny that police had arrested the wrong person.

14. Deny the allegations set forth in paragraph “14” of the complaint.

15. Deny the allegations set forth in paragraph “15” of the complaint, including all subparts thereto.

16. In response to paragraph "16" of the complaint, defendants repeat its response to the allegations set forth in paragraphs "1" through "15" as though fully set forth herein.

17. Deny the allegations set forth in paragraph "17" of the complaint.

18. Deny the allegations set forth in paragraph "18" of the complaint.

19. Deny the allegations set forth in paragraph "19" of the complaint.

20. Deny the allegations set forth in paragraph "20" of the complaint,

21. Deny the allegations set forth in paragraph "21" of the complaint.

22. Deny the allegations set forth in paragraph "22" of the complaint.

23. Deny the allegations set forth in paragraph "23" of the complaint.

24. Deny the allegations set forth in paragraph "24" of the complaint

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

36. The complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

37. Defendants have not violated any rights, privileges, or immunities under the Constitution or laws of the United State or the State of New York or any political subdivision thereof.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

38. The alleged injuries were due to plaintiff's own negligence and/or culpable conduct and for the intervening culpable or negligent conduct of others for whom the City of New York is not responsible, and were not proximately caused by defendants.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

39. This action may be barred in whole or in part by the doctrines of *res judicata* and/or collateral estoppel.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

40. The individual defendants have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

41. There was probable cause for plaintiff's arrest, detention and prosecution.

**AS AND FOR AN SEVENTH AFFIRMATIVE DEFENSE**

42. The New York City Police Department is not a suable entity.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

43. This action is barred, in whole or in part, by the applicable statute of limitations.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

44. Plaintiff provoked any incident

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

45. This action may be barred in whole or in part for plaintiff's failure to comply with conditions precedent to suit.

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE**

46. Plaintiff cannot obtain punitive damages against the City of New York.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

47. At all times relevant to the acts alleged in the complaint, defendants acted reasonably in the proper and lawful exercise of their discretion.

**WHEREFORE**, defendants Luis Fernandez and Segio Marte demands judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

DATED: New York, New York  
December 10, 2007

Respectfully submitted,

MICHAEL A. CARDOZO  
Corporation Counsel of the City of New York  
*Attorney for Defendants*  
CITY OF NEW YORK  
100 Church Street, Room 3-209  
New York, New York 10007  
(212) 788-1096

By: 

SUMMIT SUD (SS2781)

TO: Rudy Velez, Esq.  
930 Grand Concourse Suite 1A  
Bronx, New York 10451 (via ECF)

Index No. 07 CV 7098(HB)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUAN PEREZ

Plaintiff,

- against -

CITY OF NEW YORK; NEW YORK CITY  
POLICE DEPARTMENT (NYPD); individually and  
in their official capacity as NEW YORK CITY  
POLICE OFFICERS-POLICE OFFICER LUIS  
FERNANDEZ, SH#17933, and POLICE OFFICER  
SEGIO MARTE, SH# 25830, Precinct 30 and John  
Doe Police Officer.

Defendants.

**ANSWER TO COMPLAINT**

**MICHAEL A. CARDOZO**

*Corporation Counsel of the City of New York  
Attorney for Defendants  
100 Church Street, Room 3-209  
New York, N.Y. 10007*

*Of Counsel: Sumit Sud  
Tel: (212) 788-1096  
NYCLIS No.*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 2007 . . .*

*.....Esq.*

*Attorney for .....*